

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

JAMES MCCURDY,  
Plaintiff,

v.

M. RIVERO, et al.,  
Defendants.

Case No. 17-01043 BLF (PR)

**ORDER DENYING MOTION TO  
FILE OBJECTIONS IN SUR-  
REPLY; GRANTING LEAVE TO  
FILE SWORN DECLARATION IN  
SUPPORT OF OPPOSITION**

(Docket No. 140)

Plaintiff, a state prisoner proceeding *pro se*, filed a civil rights action pursuant to 42 U.S.C. § 1983. Defendants filed a motion for summary judgment, (Docket No. 118), which became submitted on August 1, 2019, upon the filing of their reply, (Docket No. 139). (Docket No. 13 at 6.)

On August 8, 2019, Plaintiff filed a motion for an extension of time to file a sur-reply to Defendants' reply. (Docket No. 140.) In the accompanying declaration, Plaintiff asserts that Defendants, in their reply, objected to his opposition on the grounds that it is not properly sworn and signed under penalty of perjury. (Docket No. 140-1 at 2.) He requests leave to file a properly sworn and signed declaration in opposition to Defendants' summary judgment motion along with other objections.

1 Local Rule 7-3(d) provides that an opposition party may file and serve an objection  
2 to reply evidence only “if new evidence has been submitted in the reply.” *See* Civil L.R.  
3 7-3(d). Plaintiff makes no assertion that Defendants have improperly submitted any new  
4 evidence in their reply. Rather, the only evidence submitted by Defendants with their  
5 reply was to refute the evidence Plaintiff submitted in support of his opposition. (Docket  
6 No. 139.) Accordingly, on that basis alone the motion should be denied under Local Rule  
7 7-3(d). However, in the interest of justice and in light of Plaintiff’s *pro se* status, Plaintiff  
8 shall be granted an opportunity to file a properly sworn and signed declaration in support  
9 of his opposition to Defendants’ summary judgment motion. That is the only additional  
10 document from Plaintiff that the Court will accept and consider in deciding Defendants’  
11 summary judgment motion.

12 Plaintiff shall file his sworn declaration **no later than fourteen (14) days** from the  
13 date this order is filed. Defendants’ summary judgment motion shall be deemed submitted  
14 on the date Plaintiff’s sworn declaration is due. **No further extensions of time shall be**  
15 **granted.**

16 This order terminates Docket No. 140.

17 **IT IS SO ORDERED.**

18 Dated: August 26, 2019



BETH LABSON FREEMAN  
United States District Judge